



David B. Cohen
Mayor

CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development
Michael J. Kruse, Director

Telephone
(617)-796-1120
Telefax
(617) 796-1086
TDD/TTY
(617) 796-1089

CONSERVATION COMMISSION MEETING MINUTES January 22, 2009 Beginning at 7:30 p.m. City Hall, Rm 222

MEMBERS PRESENT: S. Lunin, Vice-chair, D. Green, J. Hepburn, D. Dickson, N. Richardson

MEMBERS ABSENT: I. Wallach, R. Matthews

MEMBERS OF THE PUBLIC: See attached sign-in sheet

John Lojek – at CC's request to discuss cooperation between CC and ISD.

Meeting: The Commission asked about how the owner of 15 Harwich had received a building permit and certificate of occupancy when there was supposed to be a hold on the property by Conservation. Mr. Lojek responded that the building permit was issued in error and prior to his employment by the city. He does not know how the Certificate of Occupancy was issued, but can talk to IT re a better understanding of permanent and temporary property holds and how they can be removed. He said he has created a Joint Enforcement Task Force. The Commissioners expressed their interest in working with ISD to improve cooperation on issues such as this.

Rachel Freed –update/remarks.

Meeting: Former CC member thanked the Commissioners for their support during her treatments and said she is not ready to come back yet.

***Note: Some of the following hearings were taken out of order to try to accommodate applicants.**

32 Williams St. – NOI – continued from 2007- with new plan for 2-family dwelling and driveway in riverfront to the Charles River alternatives analysis and rebuttal of interests to be protected submitted at meeting.

Report: See evaluation of alternatives analysis in packet. I have asked the Law Department (Roger's request) for a memo re whether Mr. Robart needs to show ownership of the additional 3000 or so sf of additional land he claims for total lot size of 9500 sf of land – I expect to have something from them by the meeting date. I do not think the CC can evaluate the alternatives analysis without this additional information, e.g., whether the proponent actually owns 9500 sf and has any hope of building a 2-family house on the site. The proponents also submitted a Performance Standards Analysis asserting that the lot is not significant to protect any of the 9 interests under the Act, except fisheries (the Charles supports anadromous fish runs for alewife and herring).

Conservation Commission

1000 Commonwealth Avenue, Newton, Massachusetts 02459
Email: aphelps@newtonma.gov
www.ci.newton.ma.us

At least 3 trees were removed from the site (pics in file), and 2 large shrubs were removed. These and the remaining trees along the bank offer canopy for nesting birds and seeds for squirrels and small mammals. Their roots help stabilize the bank, and slow runoff, preventing flood damage, and help prevent pollution from runoff. The material submitted states the proponent will create "a naturally-vegetated area up to 40 ft wide," but there is no plan before the CC that shows this offer. In fact, I still believe the applicants need to provide mitigation for "re-development" under 10.58(5) at a rate of at least 2:1 for the sf of the building being replaced. I recommend the CC ask the proponent to provide additional documentation to prove he owns the additional land beyond the 6390 sf of the original lot. The proponent is asking for a substantial increase in square footage of development, justified on the basis of a project design for a 2-family house. If the proponent cannot build a 2-family house, because of zoning restrictions, he should submit revised plans. Additionally, the CC should request a summary of total new and re-development proposed on the lot, and a detailed proposal for mitigation.

Meeting: The Planner evaluated the alternatives analysis and said she could not reproduce it and the applicants did not follow the parameters they set. The [implied] date for comparison was the stated date of purchase, May 5, 2008, but the regulations say the analysis should use alternatives available on the date the applicant filed with the CC. Asking the city's GIS expert to help, Anne prepared a list of all properties purchased in the past 2 years. It showed the purchase price of the property was consistent with the listed lot size of ~6400 sf, and considerably less than properties listed for ~9500 sf.. The owner said the last deed filed was in 1917, and he re-wrote and re-filed the deed with a copy to the city Engineering Department. The Law Department believes the new owner can claim the entire 9500 ~ sf. D. Dickson suggested the alternatives analysis should be focused on what can be done with the site. He asked about the size of the current structure and was told the proposed structure is about 3 times the size (~2200 sf) of the existing structure. D. Dickson said the applicant might consider making the house smaller and considering a single-family house. Discussion ensued about whether to apply 10.58(4) for new development or 10.58(5) for re-development standards. The CC would prefer an accurate alternatives analysis and has the option to deny the project if another property of similar size and price with less wetland impact was available at the same time. D. Green wants to look at the site plan and a reasonable way to develop the property before accepting the alternatives analysis. The Planner noted that advice from DEP on similar filings indicated they should not be treated as new development. The CC members agreed to ask owner for continuance and all would use the month to reach resolution on whether the project is new development or re-development. The applicant agreed to continue to February 26th.

15 Harwich Rd –Violation -G.L.M. had proposed in a letter to plant double the number of plantings in exchange for earlier sign-off on EO; CC rejected proposal. G.L.M. representative had requested to be put on the agenda to address the CC directly. However, no representative attended. Letter sent to new owners to come in and address the issues. Mr. Feinberg attended last meeting and said he would provide plans required under EO.

Report: No new material has been received and I have had no additional contact with Mr. Feinberg. A new EO should be issued following this meeting reflecting any materials presented that satisfy portions of the existing EO, and setting new deadlines for any remaining work.

Meeting: Mr. Feinberg did not appear, nor has he submitted any plan as promised. The Planner has prepared a new EO as requested, updated to omit actions no longer relevant and to set new performance deadlines. New EO issued for failure to correct previous violations. The new plan is due in 3 weeks and plantings to be completed and a site visit scheduled prior to May 5. A complete after-the-fact NOI filing is to be submitted within 30 days of issuance of the new EO.

Motion by D. Dickson to issue new EO with noted conditions and performance deadlines. Second by D. Green. Vote: All in favor. Motion passed.

MA Highway – RDA for on-going work on I-95 (previous RDA expired).

Report: A site visit was conducted on 12-15-08 with Andrea Norton, MA Highway, Environmental Analyst. A list of maintenance/repair to the erosion and sediment control measures was made. I recommend a negative determination with work in the area to resume when/if corrections are made as noted.

Meeting: Andrea Norton was present for MA Highway and described the work. Short discussion of erosion and sediment control used.

Motion by D. Green to issue negative determination #2 with condition of no resumption of work until erosion and sediment control deficiencies are corrected and approved by Anne. Pieces of silt fence can be used in catch basins instead of silt sac. Second by J. Hepburn. Vote: All approved. Motion passed.

333 Verndale Road – Violation: Fill in flood zone (to So. Meadow Brook) – 4 sheds, assorted plastic, rubber, metal, glass and yard waste (limbs, leaves, etc.) in back yard. Owner called and will appear at Jan. meeting.

Report: In packet is material submitted by owner, who seems to be claiming that the sheds be allowed to remain as “grandfathered” structures that were present on the lot prior to the Wetlands Protection Act (~1975) or the City of Newton Watershed/Floodplain Ordinance (Jan. 21, 1985; revised Aug. 12, 1991). Owner says he is removing other material slowly.

Meeting: Mr. and Mrs. Agress, owners, provided a copy of their deed and a statement that the sheds were erected prior to the WPA and the City’s Watershed/Floodplain Ordinance, and asked that the CC consider them prior existing structures, exempt from the requirements of both. They said one shed has been replaced and another modified within the past 10-15 years. D. Dickson advised the owners, that even prior existing structures require permits from the CC to be moved or modified in floodplain.

Motion by D. Dickson to permit four sheds and the picnic table, and owner shall remove all other fill, to include plastic, cans of flower pots, glass, metal, and piles of vegetation from the flood zone. Motion seconded by D. Green. Vote: All in favor. Motion passed.

24 Warren Street –RDA for landscaping, installation of a geothermal well, installation of an underground rainwater collection and reuse tank, and installation of underground electric duct in the 100 ft buffer zone to bank of Thompsonville Brook.

Report: During a site visit and meeting with Mr. DeVellis and other member’s of Mr. Goldman’s design team, I heard from Ms. Mary Penniman (a landscaper) who is proposing to remove “invasives” and re-plant the entire length of the stream with selected “native” plants as part of a “stream restoration,” under what the cover letter for the submittal refers to as the “enhancement of the wetland buffers.” I recommended the removal of hostas and daylilies from the northern banks of the stream, but the work described goes far beyond this. Ms. Penniman expressed her belief that the streambed is not “natural/in its original bed” because there are no hydric soils below the bed, and she thinks rocks have been added to the stream bed. As part of the removal of non-natives, the proposal includes the removal of a number of Norway maples near/on the stream bank. The removal of canopy, that is habitat for birds and other wildlife, will take years to replace. The presence of hornbeam, beech, elm, ash, sugar- and other maples along the stream shows other species can grow and thrive nearby. Perhaps a gradual removal (1 or 2 trees/year) could be implemented to provide a more gradual change. The Riverfront Act provides an exemption [from filing a NOI] for planting native plants – that provision/exemption is not included in buffer to bank, buffer to BVW or in other resource areas. The proposed work goes quite a bit beyond the requested “buffer zone” of uncut vegetation the CC requested. I do not believe the stream bank needs to be restored. Regardless, I believe the extent of proposed work of replanting along the stream, the addition of a dry fieldstone path along the stream, a geothermal well, and a new lawn/play area, the installation of a Duct Bank to reposition utilities, and a design modification to the end of Warren Street (more hardscape), and re-planting of the designated “lawn,” as described, calls for the filing of a Notice of Intent.

If the CC approves the project, anyway, I suggest the following conditions which I believe necessary to prevent alteration of the resource area: 1.No removal of native species from any area of bank or streambed, and 2. only allow bank re-planting on the north side of the property to minimum necessary to remove hostas, daylilies and pachysandra. 3. Only 5”diam. Removal of Norway maples allowed per yr/ with replacement with equal diam of native trees nearby. 4. As mitigation for path/increase in hardscape, increase size of buffer to be minimum width of 8 ft in all areas not bordered by path. 5. Grass/play area not to be re-planted or fertilized. Note: The geothermal well may require a permit from the BOH prior to the start of work.

Meeting: Jim DeVellis and Katherine Martin represented owner Jeffrey Goldman, also present. The proposed additional work was described. Following some discussion, the Commission agreed the scope of proposed work is too broad for a RDA, and said the proponent needs to determine where the right-of-way ends for Warren Street, and that the proposal can be added to the existing NOI (as request for amended OOC), or can file new NOI.

Motion by D. Green to issue a positive determination #3 and #4. Second by D. Dickson. Vote: All in favor. Motion passed.

45 Harwich Road –RDA to tear down and re-build a single-family house in the 100 ft buffer zone to bordering vegetated wetland.

Report: The site plan shows most of the proposed work is 100 ft from the bordering vegetated wetland. The land gently slopes behind the house to the wetland area. The back of the lot has non-native plantings so that vegetation cannot be used as a primary means to determine the wetland line. The slope to the flagged wetland line is gradual, and frozen ground and snow cover preclude use of soils analysis and other signs of hydrology. Because nearby lots have had prior issues with illegal fill or other work in wetlands, I would like to be able to confirm the wetland line by getting cores when the snow melts/the ground thaws. I recommend the CC request the owner consent to continue until I can meet with the wetland consultant to view the flag line and get soil samples under better weather conditions.

Meeting: Owner says the area in the buffer (if wetland line correct) is about 10 sf, and he wants to start work in March. The Commission asks the owner's consent to continue to allow more time to view the wetland line. Owner agrees to continue to February 26th.

140 Brandeis Road Newton South High School- NOI for construction of a new track with inset synthetic turf football field and associated grading located partly within the 100 ft buffer zone to bordering vegetated wetland.

Report: NSHS proposes to construct a natural turf baseball field, a natural turf softball field, and a synthetic turf multi-sport field & a track with an inset synthetic turf football field. A portion of the track and synthetic turf field surrounded by the track is within the 100 ft buffer zone to bordering vegetated wetlands. A new drainage system will be installed that will decrease the amount of surface run-off to the adjacent wetlands by approximately 21%. I have not completely finished my review of all materials submitted. However, the loss of inflow to the wetlands is of concern, as is the possible migration of crumb rubber into the adjacent wetlands from the new synthetic field. The latter should be preventable by a permanent wind screen (already incorporated into the plan) along the bottom of the existing chain link fence adjacent to the wetlands. The loss of surface flow to the wetlands may be partially offset by increased infiltration expected from the new drainage system. Erosion and sediment control measures seem adequate, and designated sites for soil stockpiles are out of the buffer zone. Engineering is satisfied the project's drainage plans meet all state storm water requirements.

Meeting: Lou Taverna, Engineering Department, and Nathan Collins, Gale Assoc., Inc. were present to describe the project for the City. Green cards and certificates of mailing were presented to document abutter notification. Comment letters were submitted by Mr. Anatol Zukerman and Mr. Guive Mirfendereski at the meeting. Various members of the public asked to speak, including: Ted Tye, Deena Davis, Jeff Epstein, Mayor David Cohen, Jane Mau (sp?), David Ball, and Alderman Ken Parker. Environmental Planner reported that highest levels of leachates (ones in highest concentrations) from rubber immersed in water are zinc, iron, manganese, and some volatile organic compounds, including aniline. The CC can only deny if proposal will alter adjacent wetland area. Gale Associates has incorporated a 4 ft wind fence, woven into the chain-link fence. The project does not exceed any MEPA triggers for review. CC members had questions about what other Commissions had required as conditions. Nate Collins said he could try to find some information. After listening to all those who wished to comment, the Commission noted that there was no file number issued and that the Sr. Planner had not reviewed all the material yet and asked the proponent's representative, Lou Taverna, if he would agree to continue. Meeting continued to February 26, 2009.

229 Dudley Road – Emergency OOC and after-the fact NOI for work and removal of cess pool and leaching field.

Report: Owner has not begun the work due to weather constraints, and requested an extension of the Emergency OOC and the deadline for filing the "after-the-fact" NOI. Planner recommends extension, this once, as owner says problems with contractor.

Motion to approve new emergency OOC with 30 days to do the work and 30 days to file a NOI (for work connecting to city sewer and removing cesspool) by N. Richardson. Second by J. Hepburn. Vote: All in favor. Motion passed.

Violations –Updates

Houghton Gardens – I have been unable to contact the 2 students from BC – one of them is in New Zealand attending a university there.

18 Rockland

394 Boylston St.

160 Pine St – Gazebo
1203&1211 Washington
93 Andrew St
3 Fuller

Certificates of Compliance (*needs action)

MWRA

15 Marla Circle

1676 Commonwealth

11-19 Hargrove Circle

Announcements & General Business:

December 2008 Meeting Minutes for approval

Outstanding issues – discussion

Proposed ordinance – alternate members – is in the Zoning & Planning Committee

Non-criminal ticketing – report

Performance Bond – memo sent to comptroller to set up accounts

Other

Marriott Hotel – Bd. Of Aldermen considering mitigation for work done without required Special Permit. Env. Planner has suggested some items needing work in Norumbega for mitigation. BOA has indicated they think additional mitigation is indicated. D. Dickson was to ask Newton Conservators about their ideas for mitigation. He will ask them to provide suggestions to the BOA.

Meeting adjourned 12:50 a.m.

Respectfully submitted,

Anne Phelps, Sr. Environmental Planner